

Estes	Kelly (MS)	Perry	Mullin	Ross	Sykes
Ezell	Kelly (PA)	Pfluger	Nadler	Ruiz	Takano
Fallon	Kiggans (VA)	Posey	Napolitano	Ruppersberger	Thanedar
Feenstra	Kiley	Reschenthaler	Neal	Ryan	Thompson (CA)
Ferguson	Kim (CA)	Rodgers (WA)	Neguse	Salinas	Thompson (MS)
Finstad	Kustoff	Rogers (AL)	Nickel	Sánchez	Titus
Fischbach	LaHood	Rogers (KY)	Norcross	Scanlon	Tlaib
Fitzgerald	LaLota	Rose	Ocasio-Cortez	Schakowsky	Tokuda
Fitzpatrick	LaMalfa	Rosendale	Omar	Schiff	Tonko
Fleischmann	Lamborn	Rouzer	Pallone	Schneider	Torres (CA)
Flood	Langworthy	Roy	Panetta	Scholten	Torres (NY)
Foxx	Latta	Rutherford	Pappas	Schrier	Trahan
Franklin, C.	LaTurner	Salazar	Pascarell	Scott (VA)	Trone
Scott	Lawler	Santos	Payne	Scott, David	Underwood
Fry	Lee (FL)	Scalise	Pelosi	Sewell	Vargas
Fulcher	Lesko	Schweikert	Peltola	Sherman	Vasquez
Gaetz	Letlow	Scott, Austin	Perez	Sherrill	Veasey
Gallagher	Loudermilk	Self	Peters	Slotkin	Velázquez
Garbarino	Lucas	Pettersen	Smith (WA)	Smith (WA)	Wasserman
Garcia, Mike	Luetkemeyer	Phillips	Sorensen	Soto	Schultz
Gimenez	Luna	Pingree	Spanberger	Spanberger	Waters
Gonzales, Tony	Mace	Pocan	Stansbury	Stanton	Watson Coleman
Good (VA)	Malliotakis	Porter	Stanton	Stevens	Wexton
Gooden (TX)	Mann	Pressley	Stanton	Strickland	Williams (GA)
Gosar	Massie	Quigley	Stanton	Swalwell	Wilson (FL)
Granger	Mast	Ramirez	Swalwell		
Graves (LA)	McCarthy	Raskin			
Graves (MO)	McCaul				
Green (TN)	McClain				
Greene (GA)	McClintock				
Griffith	McCormick				
Grothman	McHenry				
Guest	Meuser				
Guthrie	Miller (IL)				
Hageman	Miller (OH)				
Harris	Miller (WV)				
Harshbarger	Miller-Meeks				
Hern	Mills				
Higgins (LA)	Molinaro				
Hill	Moolenaar				
Hinson	Mooney				
Houchin	Moore (AL)				
Hudson	Moore (UT)				
Huizenga	Moran				
Hunt	Murphy				
Issa	Nehls				
Jackson (TX)	Newhouse				
James	Norman				
Johnson (LA)	Nunn (IA)				
Johnson (OH)	Obornolte				
Johnson (SD)	Ogles				
Jordan	Owens				
Joyce (PA)	Palmer				
Kean (NJ)	Pence				

## NOES—205

Adams	Crow	Jackson (IL)
Aguilar	Cuellar	Jackson (NC)
Allred	Davidson (KS)	Jackson Lee
Auchincloss	Davis (NC)	Jacobs
Balint	Dean (PA)	Jayapal
Barragán	DeGette	Jeffries
Beatty	DeLauro	Johnson (GA)
Bera	DelBene	Kamlaager-Dove
Beyer	Deluzio	Kaptur
Bishop (GA)	DeSaulnier	Keating
Blumenauer	Dingell	Kelly (IL)
Blunt Rochester	Doggett	Khanna
Bonamici	Escobar	Kildee
Bowman	Eshoo	Kilmer
Boyle (PA)	Españillat	Kim (NJ)
Brown	Evans	Krishnamoorthi
Brownley	Fletcher	Kuster
Budzinski	Foster	Landsman
Bush	Foushee	Larsen (WA)
Caraveo	Frankel, Lois	Larson (CT)
Carbajal	Frost	Lee (CA)
Cárdenas	Gallego	Lee (NV)
Carson	Garamendi	Lee (PA)
Carter (LA)	Garcia (TX)	Leger Fernandez
Cartwright	Garcia, Robert	Levin
Casas	Golden (ME)	Lieu
Case	Goldman (NY)	Lynch
Casten	Gomez	Magaziner
Castor (FL)	Gonzalez,	Manning
Cherfilus	Vicente	Matsui
McCormick	Gottheimer	McBath
Chu	Green, Al (TX)	McCollum
Cicilline	Grijalva	McGarvey
Clark (MA)	Harder (CA)	McGovern
Clarke (NY)	Hayes	Meeks
Clyburn	Higgins (NY)	Menendez
Cohen	Himes	Meng
Connolly	Horsford	Mfume
Correa	Houlihan	Moore (WI)
Costa	Hoyer	Morelle
Courtney	Hoyle (OR)	Moskowitz
Craig	Huffman	Moulton
Crockett	Ivey	Mrvan

Ruiz	Ruppersberger	Sykes
Ryan	Salinas	Takano
Sánchez	Scanlon	Thanedar
Schakowsky	Schiff	Thompson (CA)
Schneider	Scholten	Thompson (MS)
Schrier	Scott (VA)	Titus
Scott, David	Sewell	Tlaib
Sowell	Sherman	Tokuda
Sherrill	Sherrill	Tonko
Slotkin	Smith (WA)	Torres (CA)
Smith (WA)	Sorensen	Torres (NY)
Sorensen	Soto	Trahan
Soto	Spanberger	Trone
Spanberger	Stansbury	Underwood
Stansbury	Stanton	Vargas
Stanton	Stevens	Vasquez
Stevens	Strickland	Veasey
Strickland	Swalwell	Velázquez
Swalwell		Wasserman

## NOT VOTING—13

Castro (TX)	Joyce (OH)	Weber (TX)
Cleaver	Loftgren	Wild
Crane	Luttrell	Williams (TX)
Davis (IL)	Sarbanes	
Garcia (IL)	Steube	

□ 1401

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

# PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE DEPARTMENT OF LABOR RELATING TO "PRUDENCE AND LOYALTY IN SELECTING PLAN INVESTMENTS AND EXERCISING SHAREHOLDER RIGHTS"

Ms. FOXX. Mr. Speaker, pursuant to House Resolution 166, I call up joint resolution (H.J. Res. 30) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. VALADAO). Pursuant to House Resolution 166, the joint resolution is considered read.

The text of the joint resolution is as follows:

## H.J. RES. 30

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule submitted by the Department of Labor relating to "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (87 Fed. Reg. 73822 (December 1, 2022)), and such rule shall have no force or effect.

The SPEAKER pro tempore. The joint resolution shall be debatable for 1 hour, equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce or their respective designees.

The gentlewoman from North Carolina (Ms. FOXX), and the gentleman from Virginia (Mr. SCOTT), each will control 30 minutes.

The Chair recognizes the gentlewoman from North Carolina (Ms. FOXX).

## GENERAL LEAVE

Ms. FOXX. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and submit extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.J. Res. 30, a Congressional Review Act resolution nullifying the Biden administration's attempt to politicize the retirement savings of Americans.

ESG investing puts the future of millions of Americans in jeopardy. Due to Biden's reckless economic policies, too many Americans are worried about the rising costs of living. Diverting retirement savings to fund social justice causes will make this problem even worse. For current retirees, the situation is especially salient.

Last year, the Biden Department of Labor published a rule allowing retirement plan fiduciaries to consider environmental, social, and governance, ESG, factors for making investment decisions and exercising shareholder rights.

The rule removed commonsense protections for retirement savings established by the Trump administration, which ensured that retirement plan fiduciaries evaluate investments and exercise shareholder rights based only on the financial benefits to participants and beneficiaries. That is what retirement savers expect.

Now, thanks to Democrats, workers can be placed into ESG investment vehicles by default. If a fiduciary finds that two investments are equal, the fiduciary is allowed to use collateral ESG factors to break the tie without justifying or documenting that decision.

While my colleagues on the other side of the aisle have argued that the Biden rule is neutral, they have done a poor job of hiding the administration's true intentions.

The Department issued the rule in response to two executive orders on climate change and the explanation of the rule is littered with Democrats' preferred political projects, such as labor relations, climate change, and workforce and corporate diversity.

Further, DOL officials have repeatedly stated that they will pursue additional actions concerning ESG and retirement plans.

The left is using ESG investment criteria as a political tool to cudgel companies into accepting leftist policies. This is how the left always operates. This is just the first step.

If we let this continue, the left will use ESG investing to push noncompliant companies out of the marketplace. This is pernicious and it is hypocritical.

It is unacceptable to encourage fiduciaries to sacrifice the savings of Americans to the orthodoxy of the woke left. In fact, this is prohibited under the Employee Retirement Income Security Act of 1974, ERISA, as affirmed by the Supreme Court.

Yet, the Biden administration's rule permitting and encouraging retirement plan fiduciaries to consider ESG when investing workers' savings flips ERISA on its head.

By paving the way for ESG investing in employer-sponsored retirement plans, President Biden is threatening the retirement savings of Americans. Such a fundamental change to ERISA should be debated and considered in Congress, not enacted through executive fiat illegally. Americans invest to secure their future, not to fund the Green New Deal or leftist pet projects.

Fiduciaries governed by ERISA should not be allowed to make investments they know will not pay off. A fiduciary's most important responsibility is to make investments that are in the financial interests of workers and retirees.

It is time to stop this madness. That is why I support the resolution to nullify the Biden administration's destructive retirement plan rule.

Mr. Speaker, I urge my colleagues to put workers and retirees above politics and vote for this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to H.J. Res. 30, a Congressional Review Act joint resolution of disapproval to nullify a popular and sensible rule issued by the Biden-Harris administration last year.

Workers should be able to invest their retirement savings in a way that reflects their values, such as combating climate change, without sacrificing investment returns.

That is why the Biden-Harris administration issued a rule to clarify that retirement plan fiduciaries may consider the economic effects of climate change and other environmental, social, and governance factors, or ESG factors, when they make investment decisions for participants in retirement plans.

Now, to be clear, this rule is not an ESG mandate.

Additionally, the rule does not change the fiduciary standard to which professionals who make investment decisions for retirement plans are bound. They must still prioritize the interests of retirement plan participants and cannot sacrifice investment returns to pursue ESG goals.

Let's be clear. Consideration of ESG factors is not at odds with making a

profit. In fact, workers' profit is still central, but if a company has negative externalities, such as carbon-intensive business practices, vulnerability to sea level rise, high liability risks, or a record of mistreating workers who may go on strike, its stock could suffer in the long term.

□ 1415

Workers often contribute to their retirement for decades before drawing down on their savings, so it makes sense that retirement plan beneficiaries must consider the long-term time horizon when making investment decisions.

Finally, there is widespread support for the Biden-Harris administration's rule. Of the comment letters submitted on the proposed rule, 83 percent of the letters submitted by institutions like corporations, financial firms, and labor organizations supported the rule.

Over 97 percent of the letters submitted by individuals supported the rule. Simply put, the Biden-Harris rule reflects the best interests of the American people and our economy.

We should not get rid of this popular and reasonable rule by this resolution. The rule just simply allows retirement plan fiduciaries to appropriately consider ESG factors.

Retirement fiduciaries, not House Republicans, are best positioned and bound by law to make prudent investment decisions on behalf of retirement savers.

Mr. Speaker, I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield 5 minutes to the gentleman from Kentucky (Mr. BARR), the originator of this CRA.

Mr. BARR. Mr. Speaker, I thank the gentlewoman, the chairwoman of the committee, for her leadership in fighting the politicization of capital allocation and the politicization of retirement savings.

Mr. Speaker, today House Republicans stand on the side of retail investors. We stand up for millions of Americans around the country who are increasingly asking themselves this simple question: When will I be able to retire?

This Congressional Review Act measure that I am offering is a bipartisan, bicameral joint resolution, disapproving of a Department of Labor rulemaking that will politicize Americans' retirement accounts and jeopardize their retirement security.

This measure simply states that retirement plan sponsors be required to prioritize maximum financial returns for investors ahead of nonpecuniary factors like environmental, social, and governance standards, a political agenda.

We do so in a moment where one in five Americans have saved nothing for their retirement, including one in three baby boomers, the generation closest to retirement.

We do so in a moment when 78 percent of Americans are either extremely

or somewhat concerned about affording a comfortable retirement.

We do so in a moment where the gap between the amount of money that Americans have saved for retirement and the amount that they will need for retirement is \$3.8 trillion.

That is why, Mr. Speaker, Congress must act to block the Biden administration's recent rule that green-lights so-called ESG investing in millions of Americans' retirement plans, plowing them into less diversified, higher fees, and lower-performing portfolios at precisely the time that we need to maximize financial security for Americans approaching retirement.

So let's consider the facts. According to a recent Wall Street Journal report, ESG funds carry 43 percent higher fees than non-ESG funds.

That is what they want. They want Americans to be forced into higher fee funds. A recent study from NYU and the University of Southern California found that over the past 5 years, global ESG funds have underperformed the broader market by 250 basis points per year, an average of 2.6 percent lower return than non-ESG funds.

This stands to reason because ESG funds are, by design, less diversified. This is investing 101.

When you discriminate against energy stocks, and you are heavy in tech, when you are in a tech sell-off, and when energy underperforms the market, who loses? The American retail investor who is unwittingly invested in these fraudulent, cancerous funds.

This means that an investor who put \$10,000 into an average global ESG fund in 2017 would have realized a \$1,750 lower return than if they had invested in the broader market.

While some of my friends on the other side of the aisle argue that ESG investing is actually driven by investors themselves, not ideologues at asset management firms and the White House who want to push their environmental or social causes at the expense of retail investors, a 2021 study conducted by the University of Chicago and FINRA proves investors largely do not care.

Mr. Speaker, 21 percent of investors don't even know what ESG stands for. Is that popular? Is that what popular ESG is?

And this neutrality nonsense. Look, nobody is saying you can't invest based on your values, but this bill would steer people unwittingly into these funds.

The status quo does not deny people to invest based on their values. It just says that the default has to be to maximize returns.

So, Mr. Speaker, this debate today is not about investor protection. It is about the ability of investors to maximize returns.

It is also about energy security. Even if you don't have a retirement account, this radical ESG movement is hitting your wallet.

Since President Biden took office, his administration has waged a war on

American energy production; not just holding up leases or blocking infrastructure, but through financial regulation and the weaponization of financial regulation to divert resources and capital and financing away from the American energy sector.

There has been a 25 percent decline in investment in natural gas and in oil investments since 2021, and the result? Gas prices are up 40 percent, and diesel prices are almost double.

Household energy costs hit a 10-year high this winter, costing average American families \$1,200, according to a report from the National Energy Assistance Directors Association.

These price hikes and the decline in investment in our energy supply come at the exact time that the Biden administration itself estimates that by 2050, almost half of our Nation's energy supply will be made up of oil and natural gas.

Mr. Speaker, we need more, not less, capital investment and financing of American energy.

I implore the administration. It is time for you to end your assault on energy production that is fueling 40-year high inflation.

We, as Members of Congress, cannot allow this administration to continue to perpetrate their war on American energy at the expense of investors.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. CASTEN), the co-chair of the Congressional Sustainable Investment Caucus.

Mr. CASTEN. Mr. Speaker, 15 years ago, more than half of U.S. electricity came from coal. Today, it is less than 20 percent.

We now generate more energy from renewables than from coal. This isn't anti-energy. It is about cheap energy.

In 2022, last year, 10 percent of all vehicle sales in the United States were EVs. That was up from 6 percent the year before, 2 percent the year before that.

ExxonMobil and Chevron today are trading at about 8 to 9 times their earnings. I would compare that to companies like First Solar and Tesla that are trading to 40 to 60 times earnings.

Let me dumb this down for you all. Mr. Speaker, 10 years ago, if you shifted your investment portfolio away from fossil energy toward climate-friendly investments, you would be richer today.

Now, my Republican colleagues, you all talk a good game about how you are into personal freedom, and yet you are taking individual investors' freedom away from them with this bill.

You all talk a good game about how government should not be picking winners and losers. Why do you all keep picking losers?

In 2011, a guy named Hugo Chavez redirected Venezuelan oil worker pensions into a Ponzi scheme run by a political ally.

My Republican colleagues a couple weeks ago voted to oppose socialism in

all its form. I am thinking that Hugo Chavez guy seems pretty smart. Let's do the same thing.

You know what you call capitalism when you are losing? Woke capitalism.

So if you all are afraid of free markets, if you want to destroy workers' pensions, if you oppose individual freedom, if you want to force your constituents to invest in proven losers, then please vote for this resolution. Be honest about your values.

For everyone else, vote "no." I plan to do so proudly and honestly.

The SPEAKER pro tempore. Members are reminded to direct their remarks to the Chair.

Ms. FOXX. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, over the past 2 years, one thing has become clear: This administration cares more about advancing its radical Green New Deal agenda than about the financial well-being of the American people.

We have seen it with their energy policy, but the latest example is the Biden administration's rule to inject woke ESG factors into workers' retirement accounts.

Thanks to President Biden's economic policies, workers' retirement savings were down 10 percent in 2022 compared to 2021. Why is this administration doubling down to further jeopardize Americans' retirement?

Retirement plan sponsors have two responsibilities to their clients: maximize returns and minimize risk. The Biden rule would allow asset managers to impose a political agenda on Americans at the expense of retirement savings.

The Biden administration should not be jeopardizing Americans' retirement by allowing plan managers to gamble their savings on ESG funds that have proven to be riskier and charge steeper fees.

That is why I cosponsored this bill with my friend, ANDY BARR, to use our authority to nullify the Biden rule and protect Americans' hard-earned retirement savings from politically motivated mismanagement.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DESAULNIER), the distinguished ranking member of the Subcommittee on Health, Employment, Labor, and Pensions.

Mr. DESAULNIER. Mr. Speaker, I thank the gentleman for yielding.

The Department of Labor's environmental, social, and governance rule is good for retirees, and it is good for the American economy.

Allowing ESG considerations can help financial professionals identify investments that will be sustainable in the long term and in the best interest of their clients.

The rule is not an ESG mandate. It simply clarifies that the professionals who make investment decisions for retirement plans do not violate their fiduciary duties by merely considering ESG factors.

Existing law already says that these professionals' primary purpose is to make the best financial choices for the plans, and this rule does not change that at all.

It merely is a recognition that if a company is inherently risky because of the business they do or their internal practices, its stock could suffer in the long run.

Just like American consumers can be motivated to disinvest from companies that pollute or mistreat their workers, now investors will have the same abilities.

As the ranking member of the Subcommittee on Health, Employment, Labor, and Pensions, I have seen overwhelming support for this rule, especially from the financial industry.

Rolling it back would be a significant step backward. I strongly oppose H.J. Res. 30 and encourage all Members to do the same so they can leave retirement plan decisions to the retirees and the professionals they respect and they work with.

Ms. FOXX. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Virginia (Mr. GOOD).

Mr. GOOD of Virginia. Mr. Speaker, today the House can repeal a policy from the Department of Labor that harms Americans who simply want to save for retirement.

This new rule from the Biden administration says that investment decisions in employer-sponsored retirement plans can be based on climate change and other environmental, social, or governance factors.

So typically without the knowledge of the retirees, their investment funds can be invested in underperforming investments that subsidize unreliable and unaffordable energy.

Congress never originally intended for 401Ks to be used to advance the priorities of the phony climate movement or to push a social justice agenda.

They were simply intended to help people to have the resources they need in retirement. If ESG-based stocks are higher performing, they would get those investment dollars anyway without this new rule.

But Americans inherently know that investing should be about evaluating risk and return from a financial point of view.

Hardworking Americans want to know their investments have strong economic fundamentals that will help them build wealth over a lifetime of work.

If Congress is successful in overturning this rule, the investing standard will return to one based on financial factors only.

It is bad enough that Bidenflation has eroded the spending power of many retirement savings accounts. Matter of fact, the average retirement account is down 30 percent over the last 2 years.

Many retirees are having to change their retirement plans or to downsize or to work longer. There is even an increase in the number of Americans who

are borrowing or withdrawing from the retirement accounts before retirement, just trying to make ends meet.

□ 1430

Still, the Department of Labor used executive fiat to leverage trillions of dollars that would be vested in retirement plans to advance their woke agenda that can't pass Congress.

With this vote, Congress can put some checks and balances to work for the American people, and I urge my colleagues in the House and the Senate to protect the retirement plans of hardworking Americans by voting for this bill.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlewoman from Minnesota (Ms. OMAR), a distinguished member of the Committee on Education and the Workforce.

Ms. OMAR. Mr. Speaker, I rise today in strong opposition to H.J. Res. 30.

When we, as Americans, are given the opportunity to know what investments to make, the kind of investments that we can make, and the kind of impacts that they will have, that matters. That choice should always be with each one of us. The investments that we make might have an impact on the rest of the world.

Many of us would be outraged if we knew that our investments went toward forced labor activities in China and other parts of the world. Yet, this resolution would make it difficult for hardworking Americans to determine what investments are being made in their name.

Our constituents deserve the freedom to access this information and to have the right to ensure that their money is being invested in a way that is aligned with their values.

Mr. Speaker, I urge my colleagues to reject this resolution and protect the rights of Americans to make financial and moral decisions about the kind of investments that they want their retirement to be made of.

Ms. FOXX. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. GROTHMAN).

Mr. GROTHMAN. Mr. Speaker, I am glad this House joint resolution is before us today. We continue to march toward a different sort of government, and part of that different sort of government is the ESG ideology being imposed or encouraged on America's corporations.

This is an ideological push on corporations, of which there is too much already. Already, particularly big corporations have seminars giving the leftwing view of the environment, the leftwing view of race, the leftwing view of agenda.

This is to further push down on them and say: Here you are, Mr. Big Corporation. We will give you a nice pat on the back if you use all of your stockholders' money to promote a political agenda.

Obviously, that should be offensive to any freedom-loving person in America.

Of course, in addition to that, studies from UCLA and New York University show that the average corporation that engages in this ESG stuff, their market goes up 6.3 percent instead of 8.9 percent, so the shareholders have to pay a price.

To me, secondarily to the shareholders paying a price is this pound, pound, pound that we already get from the universities, that we already get from the popular culture and Hollywood, and now we have to get it from big business, that the traditional, freedom-loving moral values of America are something to be stepped aside, and we, big corporate America, are going to ingratiate ourselves to the leftwing bureaucrats in Washington by following the ESG standards.

I am very grateful that my good friend from North Carolina has let me give this speech, and I sincerely hope everybody stands up for freedom.

The other side of the aisle would not like it if the people who decide what ESG was, was written by JIM JORDAN, okay? Maybe someday that will happen. I don't know.

I liked it better when the big corporations stayed out of this thing, but you want to put the sword over their throat and say: This is the view of the world that you must adopt. You must have seminars and shove it down the throats of your employees.

It will be a bad day for America if this thing doesn't pass.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. VARGAS), a co-chair of the Congressional Sustainable Investment Caucus.

Mr. VARGAS. Mr. Speaker, many times, things around here get topsy-turvy. We have a group here involved in an anticapitalist crusade against free-market principles, attempting to prevent financial institutions from allocating capital in accordance with investors' preferences and risk management priorities.

Under their proposed resolution, investment advisers can no longer consider environmental, social, and governance factors that materially impact a company's performance and bottom line. That means that your hard-earned dollars cannot be adequately invested because you, the American worker, are now exposed to greater risk.

It is interesting it doesn't say that you must invest in ESG. All that the Biden administration says is that you can if you want to.

Whatever happened to capitalistic ideals that you should be able to invest in what you want? You are trying to force people to say: No, you cannot invest looking at a strategy of ESG.

That doesn't make any sense at all. It doesn't make any sense at all. It is anticapitalistic. It is antimarket. We should not support this resolution.

Ms. FOXX. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. BEAN).

Mr. BEAN of Florida. Mr. Speaker, he is at it again. President Biden's war on America's energy continues.

It started on day one with the cancellation of the Keystone XL pipeline, and 2 years later, this administration is pushing environmental, social, and governance, or ESG, to clog America's oil and gas production.

The Department of Labor is seeking to weaponize American retirement funds as part of President Biden's anti-fossil fuel agenda, all at the expense of your retirement savings. ESG requirements not only exacerbate high energy costs but also contribute to inflationary woes and weaken our national security.

To be clear, ESG is more government control. ESG is less freedom for Americans. ESG simply is a woke capitalist scam posing as responsible corporate governance, which robs Americans of their hard-earned retirement investments.

It is time to stand against the progressive mob, which only wants an inch but seems to take a mile. Today, we are going to say no. We are going to draw the line and say it ends now.

It is time to stand against the progressive mob and safeguard our Nation's energy independence from the outstretched claws of ESG. A correct vote on the bill today is "yes," as a "yes" vote today says no to ESG.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Rhode Island (Mr. MAGAZINER).

Mr. MAGAZINER. Mr. Speaker, I rise to oppose this misguided resolution, which will tie the hands of investors from doing their jobs and will hurt the retirement savings of millions of hardworking Americans.

The evidence is clear. Companies that adopt thoughtful policies to manage their environmental, social, and governance risks outperform those that don't. I will say that again. Companies that have thoughtful policies to manage their environmental, social, and governance risks outperform those that don't.

Don't believe me? Ask the shareholders of BP, whose stock fell more than 50 percent after the Gulf oil spill, wiping out billions of dollars of shareholder value; or Volkswagen, whose stock fell 45 percent after they were caught cheating on emissions tests.

How about Norfolk Southern? They are in the news lately. Their stock is tanking because of their inattention to managing the safety of their operations.

The fact is that environmental, social, and governance issues are financially material to company performance. Any investor who knows what they are doing would be foolish to ignore those factors.

I know this because, as State treasurer and as an investor in the private sector, I have spent the last 10 years studying corporate performance. ESG issues matter.

Even if you don't agree with me, even if you think that environmental and social issues are not material to performance, you ought to at least believe

that, in a free market, investors should have the power to make their own decisions and to choose which factors they think are material or not.

Let them use their professional judgment. Don't try to police what investors are thinking when they are making decisions.

Why is it that the Republican majority, which claims to be the party of limited government and free markets, is abandoning its free-market principles and trying to dictate to investors what they have to think? It makes no sense.

If anyone was wondering what this is about, it is not about free markets. It is not, certainly, about protecting workers' retirement security.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SCOTT of Virginia. Mr. Speaker, I yield an additional 1 minute to the gentleman from Rhode Island.

Mr. MAGAZINER. I will just say again, let's be honest about what this debate is really about. It is not about protecting worker retirement savings. If we were serious about that, we would be saying that ESG is material and should be considered.

It is not about free-market principles.

Could it be that it has to do with the oil and gas industry pouring tens of millions of dollars into campaign accounts on the Republican side? Could that be what is driving this?

Well, I think we see now where the priorities of our colleagues on the Republican side lie—not with workers, not with free-market principles, but with doing the bidding of the oil and gas industry.

Ms. FOXX. Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky (Mr. BARR).

Mr. BARR. Mr. Speaker, I don't know if my colleagues on the other side of the aisle don't understand the existing law and what this resolution does and what the Department of Labor's new rule is, or whether they are just trying to confuse the listeners and watchers here today because the truth is that this is not material for the vast majority of Americans.

The studies show that most Americans don't even know what ESG is. To the extent Americans do find it material, nothing in this resolution prohibits an American from allocating their capital the way they want to.

What this resolution will do is stop the Department of Labor from coercing Americans into lower performing, higher fee, less diversified, politicized funds. We must stop the politicization of allocation of capital.

When my friend from Illinois says: Well, why are Republicans picking losers? Really?

In 2022, the S&P 500 energy sector ended the year a whopping 59 percent higher than where it started. Amid a brutal bear market in which the S&P 500 overall lost 20 percent, if you were invested in ESG in 2022, you were a

massive loser because you were divested from energy.

Stop the politicization of capital. If you want to give Americans freedom to choose what is material for them in investing, vote against the Department of Labor rule, which would conceal what the Department of Labor is doing, which is steering Americans into investments that have political values that they disagree with.

Give Americans true transparency. Go back to the Department of Labor rule under the Trump administration, which says the default should always be consistent with ERISA, maximizing financial performance.

If you want an alternative, if you want to subordinate financial returns to the environment, to climate change, to social justice, to whatever, and you really don't care about your retirement security, then you can choose that.

Let the American investor decide, and the default should always be maximum investor returns.

Mr. SCOTT of Virginia. Mr. Speaker, I am prepared to close, and I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

It is a little ironic that our side of the aisle is being accused of being anti-capitalist and anti-free market. I would like to clarify for the record the content of the Trump Department of Labor rule on retirement plan ESG investing.

Under the Trump rule, if a fiduciary finds that an ESG factor is a pecuniary or financial factor, it can be considered when investing and exercising shareholder rights.

□ 1445

Here are a few excerpts of the Trump rule, to set the record straight:

"Nothing in the final rule is intended to or does prevent a fiduciary from appropriately considering any material risk with respect to an investment."

Another quote: "The ERISA fiduciary duty of prudence requires portfolio-level attention to risk and return objectives reasonably suited to the purpose of the account, diversification, cost sensitivity, documentation, and ongoing monitoring."

"The proposal was not intended to suggest that these principles apply other than neutrally to all investment decisions. . . ."

To suggest that the Trump rule barred a fiduciary from appropriately considering any factor that may be material to an investment is blatantly false. If anything, the Trump rule was neutral as to the prudent decisions of fiduciaries.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself the balance of my time for closing.

Mr. Speaker, during this debate, we have heard a lot about ESG investing. It is clear there is a difference of opinion on it, but whether Members of Con-

gress see things the same way is not the point.

What matters is that the Biden-Harris rule puts the decisionmaking when it comes to considering ESG factors where it belongs, in the hands of retirement plan fiduciaries who are best positioned and bound by law, which has not changed, to act prudently on behalf of plan participants. That is where the decisionmaking should stay.

They, not Members of Congress, know what is in the best interests of their plan participants, and they are bound by their fiduciary responsibilities to do the right thing.

Now, when supporters say that a fiduciary should not consider nonpecuniary factors, they ignore the fact that ESG factors can, in fact, be pecuniary, because often ESG factors, such as sea level rise, can have a profound effect on the value of the investment. Those who recognize this should be able to make reasonable investments based on that knowledge.

Mr. Speaker, I include in the RECORD several letters from organizations opposed to H.J. Res. 30. Eighty-three percent of institutions that submitted comments were in favor of the underlying rule. These organizations, who are opposed to H.J. Res. 30, include the AFL-CIO, Americans for Financial Reform, Public Citizen, SEIU, Environmental Defense Fund, League of Conservation Voters, Sierra Club, Natural Resources Defense Council, Union of Concerned Scientists, and others.

AFL-CIO,  
LEGISLATIVE ALERT,  
February 16, 2023.

DEAR REPRESENTATIVE: On behalf of the AFL-CIO, we urge you to oppose the Congressional Review Act joint resolution that has been introduced by Sen. Mike Braun and Rep. Andy Barr to disapprove of the Department of Labor's recently adopted rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (S.J. Res. 8, H.J. Res. 30).

The Department of Labor's rule clarifies that private sector retirement plan fiduciaries may consider environmental, social and governance ("ESG") factors when making plan investments or voting proxies. The rule does not require that retirement plan fiduciaries consider ESG factors, it simply acknowledges the fact that ESG factors may be relevant to investment returns.

Indeed, the consideration of ESG factors helps protect the hard-earned retirement savings of working people. ESG risks are particularly relevant for long-term investors, such as retirement plans, who are investing over the expected lifespans of their participants and beneficiaries. For this reason, ignoring ESG risks to an investment portfolio may be financially imprudent.

Contrary to what some would have you believe, investment professionals' consideration of ESG factors is not limited to environmental risks, such as climate change. Social issues such as respect for workers' rights and governance issues such as having responsible executive compensation can also impact sustainable investment returns.

The rule affirms that proxy votes should be cast in the best interests of plan participants and beneficiaries, thereby giving workers' retirement savings a voice in corporate decision making. The rule also ensures that the default investment for defined contribution

plans is the best option available regardless of whether the investment considers ESG factors.

Finally, the rule clarifies when retirement plan fiduciaries may consider benefits other than investment returns. These benefits can include the creation of good jobs, affordable housing, and economic growth for local communities. Such benefits may only be considered as tiebreakers between competing investments that equally serve the financial interests of the plan.

This rule makes clear that any consideration of ESG factors must be consistent with the fiduciary duties of loyalty and care. Retirement plan fiduciaries cannot sacrifice risk-adjusted investment returns under any circumstances. The rule appropriately holds the consideration of ESG factors to the exact same documentation requirements as any other fiduciary decision.

The decision of whether to consider ESG factors should be left to investment professionals, not politicians. Trillions of dollars in assets under management already take ESG factors into consideration when making investment decisions. Congress should not interfere in the free market by seeking to prohibit the consideration of ESG factors.

For these reasons, we strongly urge you to oppose disapproval of the Department of Labor's rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights." Congress should not play politics with our pension plans by repealing this commonsense rule.

Sincerely,

WILLIAM SAMUEL,  
*Director, Government Affairs.*

AMERICANS FOR FINANCIAL REFORM,  
*February 24, 2023.*

Hon. CHUCK SCHUMER,  
*Senate Majority Leader,  
U.S. Senate, Washington, DC.*  
Hon. KEVIN MCCARTHY,  
*Speaker of the House,  
House of Representatives, Washington, DC.*  
Chairman BERNIE SANDERS,  
*HELP Committee,  
U.S. Senate, Washington, DC.*  
Chairwoman VIRGINIA FOXX,  
*Education and the Workforce Committee,  
House of Representatives, Washington, DC.*  
Hon. MITCH MCCONNELL,  
*Senate Minority Leader,  
U.S. Senate, Washington, DC.*  
Hon. HAKEEM JEFFRIES,  
*House Minority Leader,  
House of Representatives, Washington, DC.*  
Ranking Member BILL CASSIDY,  
*HELP Committee,  
U.S. Senate, Washington, DC.*  
Ranking Member BOBBY SCOTT,  
*Education and Workforce Committee,  
House of Representatives, Washington, DC.*

DEAR SENATE MAJORITY LEADER SCHUMER, SENATE MINORITY LEADER MCCONNELL, HOUSE SPEAKER MCCARTHY, HOUSE MINORITY LEADER JEFFRIES, HELP COMMITTEE CHAIRMAN SANDERS, HELP RANKING MEMBER CASSIDY, HOUSE EDUCATION AND THE WORKFORCE COMMITTEE CHAIRWOMAN FOXX, AND HOUSE EDUCATION AND THE WORKFORCE COMMITTEE RANKING MEMBER SCOTT: The undersigned organizations urge you to defend the Department of Labor's important fiduciary rule that safeguards the savings of millions of workers who participate in private-sector employee benefit plans. The rule, titled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," has four main components: 1) removes costly and impractical record-keeping burdens on fiduciaries to ensure those who manage workers' money have the flexibility needed to consider all financially relevant risks and opportunities; 2) allows consider-

ation of collateral benefits such as creating union jobs only if different investment options equally serve the financial interests of the plan over the appropriate time horizon; 3) increases workers' investment choices within the confines of ERISA's stringent protections; and 4) removes costly and unnecessary barriers to the exercise of shareholder rights.

A vote in favor of a Congressional Review Act (CRA) resolution to nullify the rule is an affirmative vote for unworkable, burdensome Trump-era rules. Trump-era rules erected "needless barriers" and had a "chilling effect . . . on considering environmental, social and governance factors in investments" that are financially relevant. The Trump rules also put the thumb on the scale against workers' ability to exercise their shareholder rights, diluting workers' shareholder voice. Additionally, three lawyers, all experts in ERISA, recently published a paper that included an in-depth analysis of why the distinction between "pecuniary" and "non-pecuniary," first introduced in the Trump-era rules and "roundly criticized during the rule-making comment process," is self-contradictory and unworkable.

The Biden DOL rule repeatedly affirms the core ERISA tenet: that fiduciaries are not allowed to sacrifice returns in the pursuit of collateral benefits. The Biden rule returns power to fiduciaries to make the best decisions regarding relevant risks and returns in their participants' best interests, in contrast to the Trump-era rules, which sought to inject politics into fiduciary decision-making.

The CRA resolution is part of a larger, failing effort to imbue "ESG" with false meaning, vilify it, and legislate against it. This effort is backed by powerful corporate interests—including fossil fuel companies looking to postpone the inevitable decarbonization of the economy—that are attempting to roll back progress that has been made on climate change, workers' rights, racial equity, and other ESG issues with clear financial implications. They are doing so by pushing legislation and other policies that hurt both workers' hard-fought pensions and taxpayers.

This effort is unpopular—with 63 percent of voters agreeing the government should not set limits on corporate ESG investments, including 70 percent of Republicans and 57 percent of Democrats—and has suffered numerous, recent failures including: 1) Indiana's budget office finding that a bill forcing pension funds to divest from asset managers that consider ESG factors would cost \$6.7 billion over the next decade in sub-market returns, force retirees to increase their contributions, and impose an additional \$550,000 administrative costs a year; 2) Arizona Attorney General Kris Mayes announcing Arizona will no longer participate in investigations into banks and other financial institutions over ESG investing practices, stating that she believes "it is not the place of government to tell corporations and their investors that they cannot invest in sustainable technologies and practices or improve their governance processes; 3) a study finding that a 2021 Texas investment blacklist would cost municipalities an additional \$303 million to \$532 million in bond interest; and 4) North Dakota voting down, 90-3, a Texas-style bill that would have required the state treasurer to prepare a blacklist of financial firms that have committed to reducing carbon emissions.

For all the reasons stated above, we urge you to protect workers' pensions from anti-ESG attacks and vote no on the CRA resolution. For further discussion, please contact Natalia Renta.

Sincerely,

Americans for Financial Reform; Public Citizen; 1worker1vote; 350Hawaii; 7 Direc-

tions of Service; Abacus Wealth Partners; Adrian Dominican Sisters, Portfolio Advisory Board; American Family Voices; American Sustainable Business Network; As You Sow; B Lab U.S. & Canada; California Reinvestment Coalition; Change Finance; Change the Chamber; Climate Finance Action; Climate Hawks Vote.

Community Development Venture Capital Alliance; Congregation of St. Joseph; Connecticut Citizen Action Group (CCAG); Consumer Federation of America; Daughters of Charity, Province of St. Louise; Demand Progress; Divest Oregon; Earth Action, Inc.; Earthjustice; Florida for Good; Fresh Water Accountability Project; Future Nexus; Green America; Harrington Investments, Inc.; Honor the Earth; Intentional Endowments Network.

Interfaith Center on Corporate Responsibility (ICCR); Kingdom Living Temple Church; League of Conservation Voters; Mercy Investment Services, Inc.; Montana Environmental Information Center; National Community Investment Fund; National Employment Law Project; Natural Investments LLC; New Alpha Community Development Corporation; NYU Stem Center for Business and Human Rights; Oil & Gas Action Network; Omidyar Network; Opportunity Finance Network; Oxfam America; Pensions & Investment Research Consultants, Ltd.; Physicians for Social Responsibility—Pennsylvania.

Predistribution Initiative; Rabbis and Cantors Retirement Plan; Revolving Door Project; Rights CoLab; Sciencecorps; Seventh Generation Interfaith Coalition for Responsible Investment; Sierra Club; Shareholder Rights Group; SOC Investment Group; Socially Responsible Investment Coalition; The B Team; Tonic Institute; Trillium Asset Management; Union of Concerned Scientists; U.S. Impact Investing Alliance; Whitney M. Slater Foundation; Zero Hour.

SEIU,

*Washington, DC, February 21, 2023.*

DEAR SENATOR: On behalf of the two million members of the Service Employees International Union (SEIU), I write to oppose S.J. Res. 8 and H.J. Res. 30, the Congressional Review Act joint resolution(s) that have been introduced by Senator Mike Braun and Rep. Andy Barr to disapprove of the Department of Labor's recently adopted rule entitled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights." The rule clarifies that private sector retirement plan fiduciaries may consider environmental, social and governance ("ESG") factors when making plan investments or voting proxies. The rule does not require that retirement plan fiduciaries consider ESG factors, it simply acknowledges the fact that ESG factors may be relevant to investment returns. Further retirement plan fiduciaries cannot sacrifice risk-adjusted investment returns under any circumstances. The rule appropriately holds the consideration of ESG factors to the exact same documentation requirements as any other fiduciary decision.

The consideration of ESG factors helps protect the hard-earned retirement savings of working people. ESG risks are particularly relevant for long-term investors, such as retirement plans, who are investing over the expected lifespans of their participants and beneficiaries. Ignoring ESG risks, or pretending that they don't exist, may be financially imprudent to an investment portfolio and could end up with long term consequences. Contrary to outlandish claims by those who oppose the rule, investment professionals' consideration of ESG factors that could impact sustainable investment returns is not limited to environmental risks, such



as climate change, but could also include other societal issues such as respect for workers' rights, or even governance issues such as having responsible executive compensation.

The rule also affirms that proxy votes should be cast in the best interests of plan participants and beneficiaries, therefore giving workers' retirement savings a voice in corporate decision making. The rule also ensures that the default investment for defined contribution plans is the best option available regardless of whether the investment considers ESG factors. Finally, the rule clarifies when retirement plan fiduciaries may consider benefits other than investment returns. These benefits can include the creation of good jobs, affordable housing, and economic growth for local communities. These benefits may only be considered as tiebreakers between competing investments that equally serve the financial interests of the plan.

The rule makes clear that any consideration of ESG factors must be consistent with the fiduciary duties of loyalty and care. The decision of whether to consider ESG factors should be left to investment professionals, and Congress should not interfere by prohibiting the consideration of ESG factors. For these reasons, we urge you to oppose and vote against S.J. Res. 8 and H.J. Res. 30. We will add any votes on this legislation to our legislative scorecard for the 118th Congress.

Sincerely,

JOHN GRAY,  
Legislative Director.

HOUSE OF REPRESENTATIVES,  
Washington, DC, February 27, 2023.

DEAR REPRESENTATIVES: Americans work hard for their retirement savings and need to be able to trust that their 401(k) and pension plans can be managed to prudently account for all financial risks. That is why the Department of Labor (DOL) issued a rule in November 2022 to ensure that retirement plan managers can consider all factors relevant to investment risk and return in their decision-making, including financial risks due to climate change. H.J. Res. 30, the Congressional Review Act (CRA) resolution to block the DOL rule, is a threat to Americans' retirement savings. Our organizations urge all Representatives to oppose H.J. Res. 30.

Congress passed the Employee Retirement Income Security Act of 1974 (ERISA) to protect the hard earned retirement savings upon which workers and their families rely. For decades, DOL's ERISA rules set forth retirement plan managers' core duty to prudently consider all relevant factors, while remaining neutral on investment types. In 2020, the Trump Administration deviated from this longstanding approach by issuing ERISA rules that discouraged consideration of environmental, social, and governance (ESG) factors—even when these factors affect investment risk and return.

The 2022 DOL rule under ERISA returns to neutrality, in which plan managers can consider all relevant factors to assess investment risk. The rule does not mandate, prohibit, encourage, or discourage any particular type of investment. The rule is clear that retirement plan managers must base their decisions on financial risk-return factors. Those financial factors may include the financial risks and economic impacts of changing climate and other environmental, social and governance factors.

The DOL rule is supported by diverse groups including the AFL-CIO, investment managers like Vanguard and TIAA, and the American Retirement Association. President Bush's Assistant Secretary of Labor, Bradford Campbell stated that "the new rule is more consistent with the regulatory history

than the 2020 rule was." Public comments submitted demonstrate overwhelming and broad support for the Department of Labor rule.

The DOL rule restores plan managers' freedom to consider all financially relevant factors, including financial risks due to climate change, so they can offer prudent investment choices to workers. American workers deserve no less.

Congress: protect Americans' retirement savings by voting NO on this CRA resolution H.J. Res. 30.

Sincerely,

Environmental Defense Fund, League of Conservation Voters, Americans for Financial Reform, California Reinvestment Coalition, Center for American Progress, Ceres Accelerator for Sustainable Capital Markets, Change the Chamber, Clean Water Action, Climate Action Campaign, Climate Hawks Vote, Earthjustice, Evergreen Action, Natural Resources Defense Council, Public Citizen, Sierra Club, Union of Concerned Scientists, WWF.

Mr. SCOTT of Virginia. Mr. Speaker, these organizations have diverse missions, but they all agree that H.J. Res. 30 should be rejected.

Mr. Speaker, I include in the RECORD two letters from financial services firms who submitted supportive comments on the underlying rule. These firms are BNY Mellon Investment Management and Lazard Asset Management, who have trillions of dollars in assets under management.

BNY MELLON,  
December 13, 2021.

OFFICE OF REGULATIONS AND INTERPRETATIONS,

Employee Benefits Security Administration,  
U.S. Department of Labor, Washington, DC.

On behalf of BNY Mellon Investment Management, thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" (the "Proposal") published by the U.S. Department of Labor (the "Department"). We strongly support the Department's efforts to clarify the regulatory treatment of environmental, social, and governance ("ESG") factors under Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") following the publication of "Financial Factors in Selecting Plan Investments" and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" (together, the "Current Rules"). To continue the Department's efforts to add clarity to the use of ESG factors by fiduciaries we suggest the Department add clarification in the rule or preamble that a fiduciary can use a screen to consider ESG factors based on the fiduciary's determination that a particular ESG factor will impact investment value consistent with Section 2550.404a-1(c)(2) of the Proposal.

BNY Mellon Investment Management is a division of BNY Mellon, one of the world's largest financial services groups. With a presence in 35 countries, BNY Mellon looks to connect investors with opportunities across every major asset class. BNY Mellon Investment Management encompasses BNY Mellon's affiliated investment firms and global distribution companies, constituting over \$2.3 trillion in AUM (as of September 30, 2021).

BNY Mellon Investment Management follows a multi-boutique investment management model that weds the specialist expertise from its investment firms offering solutions across every major asset class, backed by the strength, stewardship, and global

presence of BNY Mellon. Each investment firm has its own unique culture, investment philosophy, and proprietary investment processes, and provides a global perspective. Our seven majority owned investment firms, are as follows (all AUM figures as of September 30, 2021): Alcentra (\$41.0B), ARX (\$7.0B), Dreyfus Cash Investment Strategies (\$342.7B), Insight Investment (\$1,100.0B), Mellon (\$448.6B), Newton Investment Management (\$139.1B), and Walter Scott (\$99.9B).

At BNY Mellon Investment Management our Responsible Investment (RI) approach varies across our investment firms, but the effective stewardship of our clients' assets is common to all and core to our own purpose. Many products or solutions offered by BNY Mellon Investment Management examine ESG factors in their investment processes and decision-making to better manage risk and generate sustainable long-term returns. Six of our investment firms—Alcentra, ARX, Insight, Mellon, Newton, and Walter Scott—are signatories of the Principles for Responsible Investment ("PRI").

As we have noted in a previous comment letter, over the past decades, fiduciaries and investment managers have come to appreciate the materiality that ESG factors can have on investment value. We welcome the Department's clarifications to the Current Rules regarding the use of ESG factors and the exercise of shareholder rights. The acknowledgment by the Department that climate risks and other ESG factors can be and often are material to investment risk and returns will better allow fiduciaries to mitigate risk and enhance returns based on evaluating ESG factors.

Within the last decade, a deep body of research has been produced that demonstrates the material influence of ESG factors on the profitability of an enterprise and the performance of its securities. For example, weak control of environmental activities such as pollution, over-consumption of raw materials or lack of recycling of waste materials readily leads to volatile or lower achieved margins or financial penalties that reduce investor returns. Similarly with social issues: high staff turnover, high strike rates or absenteeism or death or injury rates have all been linked to lower productivity and poor quality control. Regarding governance, we know from years of empirical observation that poorly managed issuers can seriously damage investor returns. To ignore the entire category of information and analysis that comprise ESG factors, therefore, could be deemed an abrogation of a fiduciary's responsibility to consider all material information when assessing the risk and return of any investment opportunity.

The Proposal appropriately balances the materiality that ESG factors can have on investment value with the Department's longstanding principles that a fiduciary's duties of prudence and loyalty require the fiduciary to consider factors that are material to investment value. In particular, a fiduciary should not subordinate the interests of plan participants and beneficiaries to other objectives, nor sacrifice investment return or take on additional investment risk to promote goals unrelated to the plan and its participants and beneficiaries. We specifically believe that the proposed removal of the definition of "pecuniary factors" and the revision to the Current Rules providing that a fiduciary's evaluation of an investment or investment course of action should be based on factors that "are material to investment value" both clarifies the rule and ensures that the rule reflects the analysis performed by fiduciaries when making investment decisions.

We also support the removal of the special rule prohibiting certain investment alternatives from being considered qualified default investment alternatives (QDIA) because the investment references ESG factors. The QDIA restrictions in the Current Rules add uncertainty and would be difficult to apply. We agree with the Department that there is not a reason to prohibit fiduciaries from prudently selecting a fund that meets the QDIA requirements and includes the consideration of ESG factors.

We support the Department's efforts to reduce the uncertainty in the market caused by the Current Rules and we suggest additional clarification regarding the use of screens. We believe this clarification could further reduce uncertainty that might otherwise prevent fiduciaries from considering ESG factors which are expected to enhance investment value and performance or improve investment portfolio resilience against the potential financial risks.

As noted above, we support the removal of "pecuniary factors" and that a fiduciary's evaluation of an investment or investment course of action should be based on factors that "are material to investment value". We think that the Department could add additional clarity to the rule or preamble by clarifying that the proposed rule does not per se prohibit a fiduciary from using a screen on investments based in whole or in part on ESG factors.

A common method used by investment managers to incorporate ESG factors into the assessment of investment risks and returns is the use of screens. As described in the Proposal, "negative screening refers to the exclusion of certain sectors, companies, or practices from a fund or portfolio based on ESG criteria." The Proposal's discussion of the benefits that can occur from the use of ESG factors in the assessment of investment risks and returns relies on sources that studied the impact of investment managers using screens based on ESG factors. However, the Current Rules and some past guidance regarding the use of ESG factors could be read to preclude the use of screens based on ESG factors.

We suggest that the Department clarify in the final rule or its preamble that the investment prudence duties and the investment loyalty duties under Sections 2550.404a-1(b) and 2550.404a-1(c), respectively, do not per se prohibit the use of screens. For example, it should be permissible for a plan fiduciary to select investment managers and funds that use screens to the extent that doing so would otherwise be consistent with its duties. It should similarly be permissible for any such investment manager to select an "investment course of action" that uses a screen to the extent that the resulting investment strategy would otherwise be consistent with its duties. Such a clarification would provide certainty to fiduciaries seeking to use ESG factors in the assessment of investment risks and returns in accordance with their prudence and loyalty duties. It would further ensure that plan participants realize the full benefits of fiduciaries using ESG factors as described in the Proposal.

We strongly support the Department's efforts to bring clarity to the use of ESG factors and the exercise of shareholder rights by plan fiduciaries. We believe the Proposal and the changes suggested here will promote retirement income security and further retirement savings by allowing fiduciaries to better manage risks and improve investment returns.

Sincerely,

HANNEKE SMITS,  
Chief Executive Officer,  
BNY Mellon Investment Management.

LAZARD ASSET MANAGEMENT,  
December 12, 2021.

OFFICE OF REGULATIONS AND INTERPRETATIONS,

*Employee Benefits Security Administration,  
U.S. Department of Labor, Washington, DC.*

DEAR MADAM OR SIR: Lazard Asset Management LLC ("LAM") submits the following comments regarding the above-referenced proposal to amend the Investment Duties regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). See Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, 29 CFR Part 2550, RIN 1210-AC03 (October 14, 2021), 86 Fed. Reg. 57272 (the "Proposed Rule").

LAM is pleased that the Department recognizes that climate change and other ESG factors are often material to the assessment of investment risks and returns. We agree with the Department that the changes proposed not only would clarify the duties of plan fiduciaries when selecting investment options, but also would help individuals build retirement income security and retirement savings. In particular, we believe that the Proposed Rule, if adopted, will provide plans with the freedom to leverage the advances that active asset managers have contributed to ESG analysis and investing in recent years.

LAM is an investment adviser registered with the Securities and Exchange Commission, with more than \$239.8 billion of assets under management as of September 30, 2021. We manage assets on a discretionary basis for a large number of global clients, including a variety of U.S. defined benefit plans, defined contribution plans, individual retirement accounts, and variable annuity portfolios.

LAM's investment decisions are based on proprietary fundamental and quantitative research techniques that our professionals have developed over decades. Our firm seeks to manage client portfolios in a way that delivers investment performance, maximizes long-term shareholder value, and limits unwanted risks—including the risks presented by ESG factors.

The Proposed Rule would allow plan fiduciaries to consider a wider variety of factors when evaluating plan investment options under Section 404(a) of ERISA, which sets forth the standards of prudence that an ERISA fiduciary must satisfy when selecting investments for a qualified plan. The Proposed Rule is in response to the rule the Department adopted in 2020, Financial Factors in Selecting Plan Investments, 85 FR 72846 (Nov. 13, 2020) (the "2020 Rule"), which is interpreted generally to require plan fiduciaries to select investments and investment courses of action based solely on the consideration of "pecuniary factors." The 2020 Rule also contains a prohibition against adding or retaining any investment fund, product, or model portfolio as a qualified default investment alternative (QDIA) if the fund, product, or model portfolio reflects non-pecuniary objectives in its investment objectives or principal strategies.

LAM agrees with the Department's overall assessment of the 2020 Rule expressed in Section 3 of the preamble of the Proposed Rule—specifically, that the 2020 Rule (1) does not properly reflect the scope of fiduciaries' duties under ERISA to act prudently and solely in the interest of participants and beneficiaries when evaluating investments and (2) creates uncertainty surrounding whether a fiduciary under ERISA may consider any ESG and other important factors in making investment decisions. A number of Department bulletins and pronouncements pre-dating the 2020 Rule effectively guided plan fiduciaries that they could consider adding

ESG investment options to their plans pursuant to Section 404(a). See e.g., Interpretive Bulletin 2008-01, Interpretative Bulletin Relating to Investing in Economically Targeted Investments, 73 FR 61734 (Oct. 17, 2008); Interpretive Bulletin 2015-01, Interpretive Bulletin Relating to the Fiduciary Standard Under ERISA in Considering Economically Targeted Investments, 80 Fed. Reg. 65135 (Oct. 26, 2015); and Field Assistance Bulletin No. 2018-01 (April 23, 2018). The 2020 Rule changed the guidance and standards set forth in those precedents.

The Proposed Rule would add language in paragraph (b)(2)(ii)(C) of the current regulation to recognize explicitly that "consideration of the projected return of the portfolio relative to the funding objectives of the plan may often require an evaluation of the economic effects of climate change and other ESG factors on the particular investment or investment course of action."

This would allow plan fiduciaries to evaluate factors that many other investors already consider material. An analysis of over 16,000 global firms over the period of 2016 to 2020 conducted by the Lazard Climate Center found investors are actively pricing in risk from company emissions profiles. The study found that with all else being equal, changes in emissions profiles can have an impact on a company's market valuation. For example, a hypothetical 10 percent decrease in carbon dioxide emissions is associated with a 0.44 percent price-to-earnings appreciation. In addition, the Swiss Re Institute's April 2021 report *The Economics of Climate Change: No Action Not an Option*, states that "[t]he transition towards a low carbon economy . . . has repercussions for asset valuations. It is clear that climate transition risks can have a substantial impact on equity and credit valuations." Their analysis concludes that "under the current trajectory, global GDP could be 11–14 percent less by mid-century than in a world without climate change."

LAM's research recognizes that there will be economic winners and losers from the low carbon transition, and that economically material factors should not be ignored in investment analysis simply because they are of an environmental, social, or governance nature. The Proposed Rule properly grants fiduciaries the express permission to consider material ESG factors in their investment analysis, which we believe should result in promoting retirement income security and more secure retirement savings.

The Proposed Rule "confirms that a fiduciary may consider any factor material to the risk-return analysis, including climate change and other ESG factors" (emphasis added). It goes on to list numerous nonexclusive examples:

(i) Climate change-related factors, such as a corporation's exposure to the real and potential economic effects of climate change, including its exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change;

(ii) governance factors, such as those involving board composition, executive compensation, and transparency and accountability in corporate decision-making, as well as a corporation's avoidance of criminal liability and compliance with labor, employment, environmental, tax, and other applicable laws and regulations; and

(iii) workforce practices, including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce's skill; equal employment opportunity; and labor relations.



We believe that the examples given in the Proposed Rule, while necessarily incomplete, do serve the purpose of providing adequate guidance to plan fiduciaries. We also believe the Department's examples focus fiduciaries on economically material considerations.

At LAM, we have embedded ESG insights into our relevant investment research and portfolio construction functions. We have developed a proprietary ESG integration framework using (among other things) materiality mapping, which is being implemented across relevant investment platforms. As an active asset manager that has incorporated ESG considerations into its proprietary research, LAM is able to regularly provide our clients with examples of how such considerations have positively influenced investment outcomes. We have made these investments into our platform because we believe that investors—including plan fiduciaries—need to understand how ESG factors impact the financial productivity, operational risks, and valuations of the companies whose shares and bonds are in their portfolios.

Paragraph (c)(3) of the Proposed Rule amends the “tie breaker” standard in the 2020 Rule to allow fiduciaries to use broader discretion when comparing investment options. Under the proposal, a fiduciary evaluating two suitable investment options may select the ESG option over the non-ESG option where both would “equally serve the financial interests of the plan over the appropriate time horizon,” instead of limiting the use of the “tie-breaker” standard to situations in which both are “economically indistinguishable.” LAM agrees with this more comprehensive approach as it recognizes that fiduciaries should have the freedom to choose an investment for the purposes of diversification or to hedge against broad categories of risk, both of which can lead to better financial performance for a portfolio.

The Proposed Rule rescinds paragraph (d)(2)(ii) of the current regulation which prevents an investment option to serve as a qualified default investment alternative (QDIA) if it includes the use of non-pecuniary factors in its investment objectives even if the option is prudent from a risk and return perspective. LAM believes the 2020 Rule in this regard is contrary to goals of ERISA as it could potentially exclude financially prudent investment options on the simple basis that they consider economically material ESG factors. As previously stated, LAM believes that consideration of economically material factors should not be prohibited on the sole basis that they are of an environmental, social, or governance nature.

We believe that plan fiduciaries should include assessments of material ESG issues when evaluating retirement plan investments. The risks identified by an ESG-integrated assessment are often ultimately detrimental, and the opportunities identified can be quite additive, to the financial performance and value of assets in an investment portfolio. Importantly, the Proposed Rule greatly reduces the current uncertainty surrounding a fiduciary's consideration of material ESG factors. It restores trust in fiduciaries by allowing them to use their professional judgement to evaluate all material factors when selecting investment options for plan participants and beneficiaries.

In light of the foregoing, we recommend that the Department adopt and implement the Proposed Rule as written. We would be happy to provide the Department with additional information concerning our comments. Any requests should please be directed to our General Counsel, Mark Anderson.

Respectfully submitted,

NIKITA SINGHAL,  
Co-Head Sustainable  
Investment & ESG.

JENNIFER ANDERSON,  
Co-Head Sustainable  
Investment & ESG.

Mr. SCOTT of Virginia. Mr. Speaker, this is just a small sample of the financial industry's support for the underlying rule. We should not overturn the rule with this resolution.

Mr. Speaker, for these reasons, I oppose H.J. Res. 30, I encourage all Members to do the same, and I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, I urge my colleagues to support H.J. Res. 30, to stop the Biden administration from decimating the retirement savings of millions of Americans.

ESG funds will not give retirees the secure future they need. According to a former BlackRock senior executive, ESG funds underperformed the broader market compared to non-ESG funds over the last 5 years.

Retirees are already worried about the rising costs of goods and services, not whether a company is using plastic straws in its cafeteria.

Americans deserve to have a secure retirement. This means retirement plans need to focus solely on workers' financial interests. That is why I urge my colleagues to support this resolution.

Mr. Speaker, I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Speaker, I rise in opposition to H.J. Res. 30, and I encourage my colleagues to vote against this measure.

H.J. Res. 30 would nullify a Department of Labor rule concerning the fiduciary duties with respect to employee benefit plans.

Under the rule issued on December 1, 2022, plan fiduciaries may consider climate change and other environmental, social, and governance (ESG) factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations.

One of my greatest joys as a Member of Congress is the opportunity to work on behalf of the people of the United States of America, to ensure that every voice is heard, and every right is upheld.

In addition, the future of the American People relies heavily on thoughtful investments in key areas that include ESG as this is the backbone of our environment and the state of livelihoods of our growing communities.

Under the Employee Retirement Income Security Act of 1974, fiduciaries of private pension plans must act in the interest of plan participants, including when making investment decisions.

If participants want to invest their employee benefits into environmental, social, and governance factors, the government should not be against it just because it goes against a particular party's interests.

The rule “Financial Factors in Selecting Plan Investments,” issued on November 13, 2020, required fiduciaries to make investment decisions based solely on “pecuniary factors.”

That rule included a “tiebreaker” standard, under which fiduciaries could consider other benefits when “alternative investment options are economically indistinguishable.”

The 2022 rule clarified how plan fiduciaries may consider climate change and other envi-

ronmental, social, or governance (commonly referred to as ESG) factors when making investment decisions.

Under the new regulation, fiduciaries may consider “the economic effects of climate change and other environmental, social, or governance factors,” but investment decisions “may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives and may not sacrifice investment return or take on additional investment risk.”

This bill establishes the disapproval of the final rule “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.”

The world is seeing more climate related disasters than ever before.

These disasters are greatly impacting the way that the public prepares their finances for potential strains.

In 2017 Hurricane Harvey ravaged many communities in my home state and devastated the livelihoods of many working-class Americans.

Many of my constituents experienced economic hardships that are still being felt today.

With an increase in natural disasters, we must protect the American public and provide them with opportunities to invest in their needs.

This point serves to acknowledge the importance we must put into our people and communities as things change and we continue to progress into the future.

Strategic and thoughtful investments in our people, environments, and livelihoods should be of utmost importance.

In essence, our future is dependent on how we invest in the now.

The American people want a future, and we can provide that by thoughtfully planning through our strategic investments in the American people of all backgrounds and the diverse environments in which we aim to thrive in for decades to come.

The SPEAKER pro tempore (Mr. DESJARLAIS). All time for debate has expired.

Pursuant to the House Resolution 166, the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SCOTT of Virginia. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.